MARQUETTE BANK, N.A.
v.
ACTING DIRECTOR, OFFICE OF ECONOMIC DEVELOPMENT,
BUREAU OF INDIAN AFFAIRS

IBIA 99-44-A Decided August 23, 2000

Appeal from the denial of payment under a loan guaranty.

Affirmed as modified.

1. Indians: Financial Matters: Financial Assistance

Under 25 C.F.R. § 103.36(a), a lender is required to notify the Bureau of Indian Affairs within 45 calendar days of a default on a guaranteed loan and to take action under subsection 103.36(b), (c), or (d), within 60 calendar days from the date of default. If the lender fails to take action within 60 calendar days or within any extended period approved by the Bureau, the loan guaranty ceases being in force and effect.

2. Indians: Financial Matters: Financial Assistance

25 C.F.R. § 103.36(a) establishes the procedures which a lender must follow after a borrower defaults on a loan guaranteed by the Bureau of Indian Affairs in order to maintain the guaranty certificate in full force and effect. A lender's failure to follow those procedures results in the certificate ceasing to be in force and effect. The Bureau is not required to show specific prejudice resulting from the lender's failure to follow the procedures.

APPEARANCES: George B. Ingebrand, Jr., Esq., Minneapolis, Minnesota, for Appellant; David B. Johnson, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Acting Director, Office of Economic Development.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Marquette Bank, N.A., seeks review of a January 22, 1999, decision issued by the Acting Director, Office of Economic Development (OED Director), declining to honor Loan Guaranty Certificates No. G973C1F5703 and G973A1F5703. The borrower was Tribal Alliance, Inc. (TAI), a Minnesota corporation owned by Sharon Seliski and Rochelle Toso, both of whom are members of the Turtle Mountain Chippewa Tribe. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision as modified in this opinion.

Background

On December 1, 1996, TAI applied to Appellant for a loan in the amount of $65,000 to begin selling gaming supplies and consulting services to gaming tribes in Minnesota, Iowa, Wisconsin, North Dakota, and South Dakota. The business plan/loan application stated that the loan proceeds would be used for acquiring office furniture, equipment, and beginning gaming inventory, and for start-up costs and working capital.

On January 7, 1997, Appellant sought a loan guaranty from the Bureau of Indian Affairs (BIA), through the BIA's Minneapolis Area Office. 1/ The information that Appellant presented to BIA showed that TAI had been Appellant's customer only since November 26, 1996. Appellant indicated that it considered TAI's weaknesses to be that it was a start-up business and was under-collateralized, and its strength to be the background and experience of its owners. Appellant also listed "90% BIA Guarantee" under "Strengths."

In a January 22, 1997, response to Appellant's request, the Area Director raised several questions about the application package and requested additional information and clarification. Appellant provided the requested information on February 24, 1997.

After receiving more information from Appellant and TAI's owners, on June 18, 1997, the Area Director notified Appellant that its loan guaranty had been approved. 2/ On June 24,

---

1/ Appellant was not a participant in BIA's loan guaranty program when it sought the guaranty. It became a participant on March 3, 1997, when it and the Minneapolis Area Director, BIA (Area Director), signed a BIA Form 5-4753, Loan Guaranty Agreement.

2/ The copy of the guaranty in the record does not show the certificate number. Other materials indicate that this was Loan Guaranty Certificate No. G9734C1F5703.

1997, TAI issued a note to Appellant in the original principal amount of $66,240. 3/ The note provided for repayment of the principal plus interest in 84 installments of $1,106.95, payable on the first day of each month beginning August 1, 1997, and extending through July 1, 2004.

Apparently TAI's owners got into a dispute almost immediately after the loan closing. Appellant noticed that the loan proceeds were being withdrawn rapidly and, after investigating the matter, determined that the proceeds were probably being expended for non-business purposes. On July 1, 1997, Appellant exercised its right of offset under the Security Agreement, and recaptured $54,500 of the original disbursement of $66,240, leaving an unrecovered balance of $11,740.

On July 21, 1997, Appellant notified BIA by telephone that only $11,740 of the approved guaranty of $65,000 would be needed. There is no documentation concerning this conversation in the administrative record, and neither party addressed the conversation in their filings on appeal.

BIA issued revised Loan Guaranty Certificate No. G973A1F5703, in the amount of $11,740, on July 25, 1997. In a July 28, 1997, letter transmitting the revised guaranty certificate to Appellant, the Area Director stated that the premium amount on the loan would be changed from $1,170 to $211.32. 4/

On September 16, 1997, BIA requested a quarterly status report on the loan from Appellant. On October 3, 1997, Appellant submitted a report on a standard BIA form. Appellant indicated that the loan was "program standard." This classification was defined on the form to mean:

> The loan does not presently expose the Government to sufficient degree of risk to warrant an adverse classification, but poses sufficient credit risk deserving more attention than a problemless loan. The category includes a loan with inadequate collateral, an inadequate loan agreement, or other deviations from

---

3/ As the Area Director notes in his answer brief, this amount was greater than the loan guaranty requested by Appellant and approved by BIA. Although the Board found no explanation for this difference in the materials before it, it notes that the difference of $1,240 equals the sum of the documentation, filing, and guarantee fees which Appellant apparently charged TAI.

4/ As noted above, the original premium was $1,106.95.

There is no evidence that the payment schedule was adjusted to show the decreased amount of the loan. See Appellant's Oct. 21, 1997, letters to TAI's owners, discussed below.

prudent lending practices exist that expose the Government to a higher than normal credit risk.

In separate, but essentially identical letters, each dated October 21, 1997, Appellant wrote to TAI's owners about problems with the loan. The letters stated:

> This letter is to inform you that note #5501293 between [TAI] and [Appellant], which is guaranteed by [BIA], is currently in default because of non-payment of the September 1 and October 1, 1997 installments. Each installment is $1,106.95 leaving a total amount past due of $2,213.90. The principal outstanding is $11,582.76, plus interest of $486.82. Interest is accruing at the rate of $3.22 per day.
>
> It is my understanding that [TAI] is no longer a viable business entity. [Both owners], however, are still responsible for the monies owed [Appellant] under the personal guarantys you signed on June 24, 1997.
>
> Please be advised that you have until Friday, October 31, 1997 to cure this default. Failure to do so may result in [Appellant] accelerating the balance owed on this note and demanding payment in full.
>
> * * * Along with the payments, I need you to provide me a summary of where the $11,582.76 in loan proceeds went, as well as a list of any assets that the company still has.

On October 24, 1997, Appellant wrote to BIA about problems with the loan. That letter stated:

> Enclosed please find demand letters that were sent by certified mail to [TAI's owners].
>
> I have spoken to both [owners]. They have both stated that the business has been discontinued. They also both stated that the $11,582.76 in loan proceeds was paid to several individuals, although they do not necessarily agree with where the money went. In any event, there appears to be no collateral available on this loan.

* * * * * *

> As I see it, there are two viable options. The first option would include [Appellant] deeming itself insecure and demanding payment on the BIA guaranty. We would then pursue [TAI's owners] for the deficiency balance. The second would be to renegotiate the terms on the existing note and hope for the best. [Appellant] would still require the BIA guaranty if that option were selected.
>
> You should be advised that [Appellant] has classified this loan as substandard because of no defined source of repayment and no collateral. [5/] As we are not well versed on the BIA program, I am really looking for some guidance and direction from you and your organization.

Oct. 24, 1997, Letter at 1-2.

The Area Director responded on November 17, 1997, stating:

> You mentioned that you were requesting some guidance on how to proceed with the delinquent loan guaranty. The process is contained in your copy of Form 5-4753, Loan Guaranty Agreement between the United States Department of the Interior, Bureau of Indian Affairs and Marquette Bank, N.A. dated March 3, 1997. There is additional information in Form 5-4755, Request for Loan Guaranty or Insurance and Approval dated June 18, 1997 and the Addendum dated June 24, 1997.
>
> We are requesting additional information from you concerning the proposed collateral for this loan.
>
> We received correspondence from your Bank dated February 24, 1997 which provided information showing a list of equipment valued at $5,600.00 and indicating deposits of $9,600.00 * * *.
>
> A letter from the Bank dated July 22, 1997 contained copies of closing and securing documents which also contained UCC Financing Statements for the collateral.

5/ According to the BIA quarterly report form, a loan is classified as "substandard" if "the borrower's paying capacity and/or the collateral pledged, if any, jeopardizes payment of the debt in full. If the deficiencies are not corrected, there is a distinct possibility the Government will sustain some loss."

> Please provide us information as to why you state in your letter of October 24, 1997 that there appears to be no collateral available on this loan.

Appellant responded on February 4, 1998, stating that the delay in responding was due to the fact that "it has been difficult to determine exactly what has happened here." Appellant indicated that the equipment that was valued by the owners at $5,600 amd was listed as collateral included "one 386 computer with printer, two desks, a filing cabinet, two tables, and a typewriter," which Toso pledged to the company. Appellant stated that Toso was not returning its phone calls and therefore it did not know the present whereabouts of the equipment. It also indicated that, of the $20,200 that had been deposited into TAI's account, 6/ distributions totaling $19,273.88 had been made to the owners and various of their relatives. Appellant stated that it had no explanation for these disbursements. Finally, Appellant indicated that TAI was shut down on July 1, 1997, "only one week after the loan was closed." It ended its letter:

> We are continuing our efforts to collect the $5,600 in equipment and I will notify you if or when we recover it. In the meantime, any assistance you could provide would be beneficial. I am specifically interested in what should be done if we are unable to recover any collateral. Do you wish to have the bank pursue legal action for the illegal conversion of assets? Do we pursue legal action based upon the amount of money distributed to the owners and their relatives?

The Area Director responded by letter dated April 13, 1998. He noted that BIA had previously referred Appellant to Form 5-4753, Loan Guaranty Agreement. In particular, the Area Director referred Appellant to Part 14 of the Agreement, which states in part: "Lenders are expected to follow accepted standards employed by prudent Lenders in the area of servicing similar type loans. In servicing loans, Lenders will make every effort to prevent and minimize potential losses."

On August 14, 1998, counsel for Appellant notified BIA of his involvement in the matter and requested a copy of BIA's November 17, 1997, letter to Appellant. BIA provided a copy of the letter on August 17, 1998.

On August 19, 1998, counsel for Appellant informed BIA that Appellant would not attempt to possess the office equipment listed as collateral for the loan because the value of the equipment did not justify a lawsuit. The letter also stated:

6/ The amounts deposited into the account that are mentioned in Appellant's letter total $22,110.27, not $20,200. Thus, it is not clear that these are the amounts "deposited into TAI's account," to which Appellant was referring.

> [Appellant] has already complied with the paragraph 20 default provisions set forth in the guaranty, however, this letter shall serve to reassert [Appellant's] written demand for reimbursement of the guarantied percentage of the loan hereunder which is 90% of the outstanding principal balance thereof. Enclosed for your file is a printout from [Appellant] dated August 17, 1998, which demonstrates that the payoff under the guarantied loan as of said date is $13,038.03 and, accordingly, the amount due [Appellant] is $11,734.22. [7/]
>
> Upon being reimbursed for [Appellant's] loss in the amount set forth above, I will promptly draft an assignment of [Appellant's] loan documents to the Bureau, including its Promissory Note, Security Agreement, Financing Statement, and Personal Guaranties, all of which documents remain in full force and effect.
>
> Please provide me with a Form 5-4760 "Notice of Default/Claim for Loss, Guarantied and Insured Loans" so that the foregoing information and any other required information can be incorporated into the foregoing document for forwarding to the Commissioner in order to perfect [Appellant's] claim on the above referenced Guaranty.

Aug. 19, 1998, Letter at 1-2.

The Area Director responded on September 21, 1998, providing information and the requested form. Appellant submitted the form and information on September 30, 1998.

The Area Director transmitted Appellant's request for reimbursement to the OED Director on December 29, 1998. The Area Director's transmittal memorandum stated in part:

> This case is unusual in that the borrowers got into a disagreement concerning the Business within days of the loan closing, they never came to any kind of agreement and the Business disintegrated. [Appellant] did contact us concerning the problem and indicated that they were trying to work with the borrowers to resolve the problem, but were unsuccessful.

Dec. 29, 1998, Memorandum at 2.

7/ No copy of this printout is attached to the Aug. 19, 1998, letter in the administrative record.

The OED Director denied Appellant's request for reimbursement on January 22, 1999. The denial letter stated:

> According to loan documents, a loan payment was due on September 1, 1997. Notice of the default on this past due payment was not sent by [Appellant] to the BIA until October 24, 1997, or 54 days after the event. November 1, 1997, was the end of the 60 day period for [Appellant] to select one of the options under 25 CFR §103.36 and notify the BIA. No notice was given to the BIA within or near this 60 day period. This instance of [Appellant's] failure to properly notify the BIA and take appropriate action would cause the BIA Loan Guaranty Certificate * * * to "cease being in force or effect." 25 CFR §103.36(a).
>
> In addition, even if there had been no violation of 25 CFR §103.36, failure of [Appellant] to perfect its liens on the collateral, as required by Loan Condition No. 7 attached to the Request for Loan Guaranty approval by the BIA, indicates a basis for reduced payments under the BIA's Loan Guarantee. Failure to perfect the liens resulted in no collateral of value being available to secure the loan. Also, company assets were listed as equity that the company did not own which would, according to 25 CFR §103.49(a) constitute Lender negligence in verifying information in the application. As a result, the BIA would not pay for the loss caused by failure to verify collateral.

Jan. 22, 1999, Letter at 2.

This appeal followed. Both Appellant and the OED Director filed briefs on appeal.

Discussion and Conclusions

25 C.F.R. § 103.36, "Default on guaranteed loans," is central to any decision in this case. That section states in pertinent part:

> (a) Within 45 calendar days after the occurrence of a default, the lender shall notify the Commissioner by certified or registered mail showing the name of borrower, guaranty certificate number, amount of unpaid principal, amount of principal delinquent, amount of interest accrued and unpaid to date of notice, amount of interest delinquent at time of notice, and other failure of the borrower to comply with provisions of the loan agreement. Within 60 calendar days after default on a loan, the lender shall proceed as prescribed in either

paragraph (b), (c), or (d) of this section, unless an extension of time is requested by the lender and approved by the Commissioner. The request for an extension shall explain the reason why a delay is necessary and the estimated date on which action will be initiated. Failure of the lender to proceed with action within 60 days or the date to which an extension is approved by the Commissioner shall cause the guaranty certificate to cease being in force or effect. If the Commissioner is not notified of the failure of a borrower to make a scheduled payment or of other default within the required 45 calendar days, the Commissioner will proceed on the assumption that the scheduled payment was made and that the loan agreement is current and in good standing. The Commissioner will then decrease the amount of the guaranty pro rata by the amount of the due installment and the lender will have no further claim for guaranty as it applied to the installment, except for the interest subsidy on guaranteed loans which may be due.

(b) The lender may make written request that payment be made pursuant to the provisions of the guaranty certificate or guaranty agreement. * * *

(c) The borrower and the lender may agree upon an extension of the repayment terms or other forbearance for the benefit of the borrower. * * * Agreements between a lender and a borrower shall be in writing and will require approval by the Commissioner.

(d) The lender may advise the Commissioner in writing that suit or foreclosure is considered necessary and proceed to foreclosure and liquidation of all security interests. * * *.

The first question raised in this case is: When did default occur? Appellant argues: "As a matter of law, it is within the sole province of the lender, Appellant, to declare the loan to be in default * * *. The loan is not in default until so declared by the lender." Opening Brief at 2. Appellant cites no authority for this argument, and does not further elaborate on it.

The Board rejected a similar argument in Security State Bank, Dunseith, North Dakota v. Director, Office of Economic Development, 33 IBIA 225 (1999). The appellant in Security State Bank appeared to argue that default did not occur until it elected to exercise one of the options available to it under the credit agreement. The Board examined the definition of "default" in 25 C.F.R. § 103.1 and the default provisions in the promissory note at issue there in holding: "Nothing in the Credit Agreement, let alone the regulations in 25 C.F.R. Part 103, supports the notion that no default exists until a remedy is invoked by the Bank." 33 IBIA at 234.

25 C.F.R. § 103.1 defines "default" as the "failure of the borrower to: (1) Make scheduled payments on the loan when due, * * * (3) Comply with the covenants, obligations, or other provisions of a loan agreement." The Security Agreement here similarly provides: "I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; * * * (3) I fail to pay, or keep any promise, on any debt or agreement I have with you." As in Security State Bank, nothing in the regulations or the Security Agreement here supports the conclusion that default does not occur until the lender declares a default.

Several dates are suggested as the date of default in this case. Having rejected Appellant's argument that default occurs when the lender says it does, the Board also rejects Appellant's related contention that default did not occur until October 21, 1997, when it notified TAI's owners that they were in default.

According to Appellant's October 21, 1997, letters to TAI's owners, TAI failed to make the loan payments due on September 1 and October 1, 1997. Even though it stated that the September 1, 1997, payment was not made, Appellant does not admit that default occurred on September 1. Instead, it argues that, if there were any default in relation to the September 1 payment, the default would not have occurred until September 11, 1997, because there was a 10-day grace period for making the payment.

The Board rejects Appellant's contention that a default does not occur until the expiration of any grace period. By definition, a grace period is a period during which a party can cure a default without incurring the penalty that would normally result from the default. 8/ If a grace period has been triggered, then there has been a default.

On appeal, the OED Director suggests that TAI may actually have defaulted on the very first loan payment, which was due on August 1, 1997. He notes that a September 23, 1998, transaction history for the loan, provided by Appellant, does not show a loan payment on or about August 1, 1997. He also asserts:

> [Appellant] knew by the time it set off [TAI's] account on July 1, 1997--a mere week after the loan closed--that [TAI] had been spending loan proceeds

---

8/ See Merriam-Webster's Dictionary of Law (1996 on-line ed. at http://dictionary.findlaw.com) which defines "grace period" as "a period of time beyond a scheduled date during which a required action (as payment of an obligation) may be taken without incurring the ordinarily resulting adverse consequences (as penalty or cancellation)."

> on non-business related expenses, x/ in violation of the loan purpose identified in the Request for Loan Guaranty or Insurance and Approval, and the pro-posed use of funds specified in [TAI's] Business Plan and Commercial Loan Application. * * * The note provides, among other things, that [TAI] would be in default if it failed to "keep any promise, on any debt or agreement" with [Appellant], and this misuse of loan funds would certainly qualify as a breach of promise. * * * In fact, the very exercise by [Appellant] of its right of set off (which is a specified remedy under the note) seems to acknowledge a pre-existing default.
>
> ---
>
> x/ Although the file is not clear on this point, [Appellant] may already have known by July 1, 1997 that [TAI's] business had been permanently shut down.

OED Director's Answer Brief at 11.

The Security Agreement contains a section entitled "Remedies." That section states in pertinent part: "If I am in default on this agreement, you have the following remedies: * * * 2) You may set off any obligation I have to you against any right I have to the payment of money from you." The Board found nothing in the Security Agreement which gave Appellant a right of offset in the absence of a default. It thus appears that, had Appellant "recovered" the loan proceeds from TAI in the absence of a default, it would have been in breach of contract.

According to the September 23, 1998, loan history statement from Appellant, an "UNSCHED PMT," which the Board takes to mean "unscheduled payment," was made on July 1, 1997, in the amount of $54,500. The payment is not explained, but this is the amount which Appellant states that it recovered through offset.

TAI must have made the improper expenditures prior to July 1, 1997, in order to have given Appellant time to notice and investigate them. 9/ However, nothing in the materials before the Board addresses the date of those expenditures. Between the parties to this appeal, the date of the improper expenditures was uniquely within the knowledge of Appellant. However, for purposes of this decision only, the Board will hold that default occurred on July 1,

---

9/ The speed with which Appellant noticed the improper expenditures and exercised its right of offset clearly prevented the loss in this case from being greater. It also, however, raises a question as to whether Appellant may have had reason to believe that TAI's owners were having problems. In its Feb. 4, 1998, letter to BIA, Appellant stated that TAI was shut down on July 1, 1997.

1997, the date on which Appellant exercised its remedy of offset in order to recover the improperly expended funds. 10/

[1] Based on a default date of July 1, 1997, Appellant was required under 25 C.F.R. § 103.36(a) to notify BIA of the default on or before August 15, 1997, and to take action on or before September 1, 1997 (the 60th day after default, August 30, 1997, fell on a Saturday). The earliest date Appellant cites for notifying BIA of a default and/or demanding payment under the loan guaranty is October 24, 1997, which is well after either August 15, 1997, or September 1, 1997. The Board holds that Appellant failed to notify BIA within 45 calendar days of TAI's default under the loan, and failed to demand payment within 60 calendar days of the default. When Appellant failed to demand payment or take other appropriate action within 60 calendar days of the default, the loan guaranty certificates "cease[d] being in force or effect" under the express terms of 25 C.F.R. § 103.36(a). 11/

10/ The Board is unable to determine from the materials before it precisely when Appellant notified BIA that it had exercised its right of offset in regard to this loan. At the latest, Appellant should have notified BIA of this fact when it requested a modification of the loan guaranty on July 21, 1997. As mentioned above, there is no record of that telephone conversation in the administrative record. Appellant does not allege that it informed BIA that it was requesting a smaller guaranty because it had exercised its right of offset in regard to the remainder of the loan. The materials before the Board, including BIA's July 28, 1997, response to Appellant's request for a reduced guaranty, strongly suggest that when Appellant requested a modification of the loan guaranty, it failed to inform BIA either that the loan was already in default or that TAI was probably no longer a viable business entity.

It thus appears possible that BIA could have denied payment under the loan guaranties on the additional ground that Appellant violated 25 C.F.R. § 103.49(c)(2) and (3), which provide:

"(c) There shall be no liability on the part of the United States to reimburse a lender on a guaranteed loan for that amount of the guaranteed loan caused by:

* * * * * * *

"(2) The lender's furnishing false information to induce the issuance of a guaranty certificate by the Commissioner; or

"(3) The lender's willful or negligent action which permitted a fraud, forgery, or misrepresentation."

11/ Because of this holding, the Board finds that it need not address Appellant's arguments that it made a demand for payment under the loan guaranty in its Oct. 24, 1997, letter to BIA or that the Area Director's Nov. 17, 1997, letter constituted an extension or waiver of the regulatory time periods. It notes, however, that it would have rejected both of these arguments on the merits had it reached them.

[2] Appellant contends that BIA cannot prove that it was prejudiced by Appellant's de minimus failure to meet the time periods in 25 C.F.R. § 103.36(a). The Board disagrees with Appellant that its failure was de minimus. If Appellant had timely notified BIA of the improper expenditure of loan proceeds and the dissolution of TAI, there would have been a much greater possibility of recovering from the owners. However, that point is ultimately unimportant here because there is no requirement that BIA prove prejudice. 25 C.F.R. § 103.36(a) establishes the procedures that a lender must follow after default in order to maintain the guaranty certificate in full force and effect. A lender's failure to follow those procedures results in the guaranty certificate ceasing to be in force or effect. Nothing more is needed.

Appellant raises several arguments which suggest that it should not be held to the time periods established in 25 C.F.R. § 103.36(a). To the extent that these arguments challenge the regulation itself, the Board has previously held that it lacks authority to declare a duly promulgated Departmental regulation invalid. See, e.g., Tanana Chiefs Conference, Inc. v. Acting Associate Alaska State Director, Bureau of Land Management, 33 IBIA 51, 53 (1998), and cases cited therein. The Board therefore lacks jurisdiction to consider any argument suggesting that the regulation is invalid.

The Board addresses Appellant's arguments to the extent that they suggest Appellant should be excused from meeting the time periods in the regulation.

Appellant cites United States v. Gordon, 78 F.3d 781 (2nd Cir. 1996), in support of a suggestion that it had six years to take action under the loan guaranty.

The Board finds nothing in Gordon that is relevant to this case. In Gordon, the court was faced with determining a reasonable period of time in which to require the Government to bring suit against a private guarantor. In the absence of any regulatory or contractual provision establishing such a time period, the court sought guidance elsewhere. It found that guidance in the Federal common law of contracts and in 28 U.S.C. § 2415(a), which establishes a six-year statute of limitations for the United States to bring suit to recover on a contract.

In this case, the period for taking action is explicitly specified in 25 C.F.R. § 103.36(a). The regulatory time periods are repeated in Paragraph 20 of Form 5-4753, Loan Guaranty Agreement, which Appellant signed in order to become a participant in BIA's loan guaranty program. Therefore, there is no need to look for a time period for taking action in anything external to the regulations and the agreement between the parties.

Appellant cites the legislative history of the Indian Financing Act of 1974 in support of an argument that denying payment under its loan guaranty will defeat the purposes of the Act. From generalized statements in the legislative history concerning the fact that the lack of capital

on reservations was a major obstacle to Indian economic development, Appellant reasons that excusing its failure to meet the regulatory time periods is consistent with Congressional intent to make capital available.

The Board agrees with Appellant that a major Congressional goal behind the enactment of the Indian Financing Act was furthering Indian economic development by assisting in making capital available on reservations. Furtherance of that goal does not, however, require that lenders be given carte blanche to ignore the regulations promulgated to implement the Act. The Board finds no basis for excusing Appellant's failure to comply with the regulations on the grounds of Congressional intent.

The Board concludes that Appellant's failure to act within 60 calendar days from TAI's default, as required by 25 C.F.R. § 103.36(a), caused the loan guaranty certificates to cease being in force and effect. It therefore also concludes that the OED Director properly denied payment under the certificates.

Based on this holding, the Board need not address Appellant's remaining arguments. It notes only that it would have rejected Appellant's contention that the OED Director erred in his conclusion that Appellant did not perfect liens on the collateral securing the loan. The primary tangible collateral for this loan was to have been office equipment which was valued by the owners at $5,600, and which one of the owners was to have given to TAI. There is no evidence that Appellant ever verified that the office equipment was properly valued at $5,600, or that the equipment was transferred to TAI. When Appellant obtained a security interest in TAI's assets, the office equipment, whatever its actual value, was not part of those assets. This is information which, as the OED Director notes, Appellant would have discovered had it verified the information in TAI's loan application as required by 25 C.F.R. § 103.49(a). 12/

12/ Section 103.49 provides in pertinent part:

"(a) Lenders shall use prudence in checking and verifying information contained in loan applications as well as supporting papers and documents in order to assure their accuracy and the validity of signatures.

* * * * * *

"(c) There shall be no liability on the part of the United States to reimburse a lender on a guaranteed loan for that amount of the guaranteed loss caused by:

"(1) The lender's negligence in checking and verifying signatures, information in the loan application, supporting papers and documents."

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the OED Director's January 22, 1999, decision is affirmed as modified by the finding here that default occurred on July 1, 1997.

_____
Kathryn A. Lynn
Chief Administrative Judge

I concur:

_____
Anita Vogt
Administrative Judge